

ORIGINAL

NEW APPLICATION



0000093558

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

2009 FEB 27 A 10: 25

AZ CORP COMMISSION
DOCKET CONTROL

In the matter of

DAN WISE (a/k/a "DANNY WISE" and
"DAN R. WISE") and CYNTHIA WISE,
husband and wife,

WHISPERING WINDS PROPERTIES,
L.L.C., an Arizona limited liability company,

LM BEAGLE PROPERTIES, L.L.C., a
Nevada limited liability company,

KARLENA, INC., a Nevada corporation,

AXIS INTERNATIONAL, INC., an Arizona
corporation,

Respondents.

DOCKET NO. S-20657A-09-0089

**NOTICE OF OPPORTUNITY FOR HEARING
REGARDING PROPOSED ORDER TO
CEASE AND DESIST, ORDER FOR
RESTITUTION, FOR ADMINISTRATIVE
PENALTIES AND FOR OTHER
AFFIRMATIVE ACTION**

Arizona Corporation Commission
DOCKETED

FEB 27 2009

DOCKETED BY

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NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that Respondents DAN WISE (a/k/a "DANNY WISE" and "DAN R. WISE"), WHISPERING WINDS PROPERTIES, L.L.C., LM BEAGLE PROPERTIES, L.L.C., KARLENA, INC. and AXIS INTERNATIONAL, INC. have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

II.**RESPONDENTS**

2. Respondent DAN WISE (a/k/a "DANNY WISE" and "DAN R. WISE") ("WISE") is a married man who at all times relevant resided in Scottsdale, Arizona.

3. Respondent WHISPERING WINDS PROPERTIES, L.L.C. ("WWP") is an Arizona limited liability company that at all times relevant conducted business within and from Scottsdale, Arizona. At all times relevant, WISE conducted business through WWP as its owner and managing member.

4. Respondent LM BEAGLE PROPERTIES, L.L.C. ("BEAGLE") is a Nevada limited liability company that at all times relevant conducted business within and from Scottsdale, Arizona. At all times relevant, WISE conducted business through BEAGLE as its owner and managing member.

5. Respondent KARLENA, INC. ("KARLENA") is a Nevada corporation that at all times relevant conducted business within and from Scottsdale, Arizona. At all times relevant, WISE conducted business through KARLENA as its owner, president, chief executive officer and director.

6. Respondent AXIS INTERNATIONAL, INC. ("AXIS") is an Arizona corporation that at all times relevant conducted business in Scottsdale, Arizona. At all times relevant, WISE conducted business through AXIS as its owner, president, chief executive officer and director.

7. Respondent CYNTHIA WISE ("SPOUSE") was at all relevant times the spouse of WISE. SPOUSE is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community.

8. At all times relevant, WISE was acting for his own benefit and for the benefit or in furtherance of WISE and SPOUSE's marital community.

9. WISE, WWP, BEAGLE, KARLENA and AXIS may be referred to hereafter collectively as "RESPONDENT(S)" as the context requires.

10. WWP, BEAGLE, KARLENA and AXIS may be referred to hereafter collectively as the “WISE COMPANIES” as the context requires.

III.

FACTS

11. From on or about July 17, 2001 to approximately January, 2009, RESPONDENTS offered and sold securities within and from Arizona in the form of notes.

12. WISE represented to investors that RESPONDENTS would use their money to fund real estate loans to, “borrowers who cannot or do not want to meet stringent lending guidelines.”

13. WISE described the underlying investor funded loans as short-term, renewable deals (the “Deals”). WISE represented to investors that the Deals were fully secured by: (a) real estate such as commercial buildings, residential homes and land; (b) “liquid assets” such as brokerage and trust accounts; and (c) “fixed assets” such as rare art, jewelry and commodities (collectively the “Collateral”).

14. The terms of the note investments varied, and stated profits ranging from 3 to 20% per year.

15. RESPONDENTS documented the note investments in two ways. First, RESPONDENTS prepared and provided investors with unsecured promissory notes signed by: (a) WISE individually; or (b) WISE individually and on behalf of one of the WISE COMPANIES.

16. RESPONDENTS also prepared and provided investors with a one-page "Deal Summary." Note investments were generically described in the Deal Summaries with acronyms such as, without limitation: (a) "Deal RCC-65;" (b) "Deal RW-67;" (c) "Deal SZ-84;" (d) "Deal BV-5593;" (e) "Deal GHH-6;" (f) "Deal KP-9;" (g) "Deal NN-76;" and (h) "Deal HN-812." Deal Summaries provided to the Securities Division of the Commission by RESPONDENTS and investors identify 270 separate Deals funded with investor money.

17. Upon the conclusion of a note investment, RESPONDENTS frequently “rolled” investors’ principal investments and paper-profits into new investments (the “Roll-Over

1 Investments”). Investors often added new money to the Roll-Over Investments. Investors often
2 rolled their investment monies into many additional Roll-Over Investments over an extended
3 period of time without taking distributions.

4 18. Thus, in addition to Deal acronyms, Deal Summaries identified: (a) note investment
5 dates; (b) principal investment money; (c) accrued “paper” profits/interest; (d) investor monies
6 transferred and/or added to Roll-Over Investments; and (e) any actual cash distributions made by
7 RESPONDENTS to investors.

8 19. RESPONDENTS managed all aspects of the investments and, without limitation,
9 negotiated the terms and conditions of the Deals. WISE deposited investor money into Arizona bank
10 accounts owned and controlled by the RESPONDENTS. At WISE’s direction, investors also often
11 wired their investment funds directly into RESPONDENTS’ Arizona bank accounts.

12 20. WISE promised investors that their note investments were: (a) secure; and/or (b)
13 safe.

14 21. The investors’ note investments were not secure because RESPONDENTS did not
15 assign investors a security interest in any Collateral associated with the underlying Deals.

16 22. RESPONDENTS further failed to inform investors that their note investments were
17 not safe because: (a) the Collateral (i.e., real estate, brokerage accounts, etc.) underlying the Deals
18 is subject to unpredictable market fluctuations and/or declines; (b) the ability of the Deal-related
19 borrowers to repay RESPONDENTS could be negatively impacted by unpredictable, expensive
20 and time consuming civil and bankruptcy litigation; and (c) investors could lose all or a vast
21 portion of their investments because RESPONDENTS did not assign investors a security interest in
22 any Collateral associated with the Deals.

23 23. At present, both WISE and WWP are debtors in consolidated Chapter 7
24 bankruptcies in which many note investment investors are creditors, and in which the note
25 investments and underlying Deals are being litigated. (*See*, 2:08-BK-15620 (RJH)).
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1 RESPONDENTS are also defendants in approximately twenty-one pending and concluded state
2 and federal civil lawsuits involving the note investments.

3 24. WISE solicited some of RESPONDENTS' investors by virtue of the fact that WISE
4 had acted as their accountant ("CPA"). At all times relevant, WISE was licensed as a CPA by the
5 Arizona State Board of Accountancy, Certificate 8957-R. WISE also held CPA Firm Registration
6 No. 4534-S. WISE's CPA licenses were revoked by his consent on December 10, 2008 for
7 misappropriating \$2,578,230 from five of his tax clients and investors. (See, Office of
8 Administrative Hearing Docket & Arizona Statement Board of Accountancy File Nos. 2009.004,
9 2009.008, 2009.010, 2009.012 & 2009.030).

10 25. During the offering period, RESPONDENTS sold hundreds of note investments
11 totaling \$67,782,698.69 to 125 investors residing in 13 states, including: (a) Arizona; (b)
12 California; (c) Colorado; (d) Connecticut; (e) Delaware; (f) Florida; (g) Kansas; (h) Pennsylvania;
13 (i) Maryland; (j) New Jersey; (k) New York; (l) North Carolina; and (m) Texas.

14 26. Of this amount, note investments totaling: (a) \$3,460,370.21 were jointly and
15 severally issued and sold by WISE and WWP; (b) \$300,000 were jointly and severally issued and
16 sold by WISE and KARLENA; (c) \$7,183,119.90 were jointly and severally issued and sold by
17 WISE and BEAGLE; (d) \$400,000 were jointly and severally issued and sold by WISE and AXIS;
18 and (e) \$56,439,208.58 were issued and sold by WISE in his individual capacity.

19 27. Considering known repayments made by: (a) WISE individually totaling
20 \$680,249.78; (b) WISE and BEAGLE, jointly and severally, totaling \$110,000, RESPONDENTS
21 owe investors at \$66,992,448.91.

22 IV.

23 VIOLATION OF A.R.S. § 44-1841

24 (Offer or Sale of Unregistered Securities)

25 28. From on or about July 17, 2001 to approximately January, 2009, RESPONDENTS
26 offered or sold securities in the form of notes, within or from Arizona.

V.

(Transactions by Unregistered Dealers or Salesmen)

32. This conduct violates A.R.S. § 44-1842.

(Fraud in Connection with the Offer or Sale of Securities)

A. Misrepresenting to investors that their note investments were secure, when RESPONDENTS did not assign investors a security interest in Collateral associated with the underlying Deals; and

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ability of the Deal-related borrowers to repay RESPONDENTS could be negatively impacted by unpredictable, expensive and time consuming civil and bankruptcy litigation are subject to unpredictable, expensive and time consuming civil and bankruptcy litigation; and (c) investors could lose all or a vast portion of their investments because RESPONDENTS did not assign investors a security interest in any Collateral associated with the Deals.

34. This conduct violates A.R.S. § 44-1991.

VII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order RESPONDENTS to permanently cease and desist from violating the Securities Act pursuant to A.R.S. § 44-2032;

2. Order RESPONDENTS to take affirmative action to correct the conditions resulting from RESPONDENTS' acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;

3. Order RESPONDENTS to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

4. Order that the marital community of WISE and SPOUSE be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215; and

5. Order any other relief that the Commission deems appropriate.

VIII.

HEARING OPPORTUNITY

Each RESPONDENT or SPOUSE may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If RESPONDENTS or SPOUSE request a hearing, the requesting respondent must also answer this Notice.** A request for hearing must be in writing and received

1 by the Commission within 10 business days after service of this Notice of Opportunity for Hearing.
2 The requesting respondent must deliver or mail the request to Docket Control, Arizona Corporation
3 Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained
4 from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at
5 <http://www.azcc.gov/divisions/hearings/docket.asp>.

6 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin
7 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the
8 parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission
9 may, without a hearing, enter an order granting the relief requested by the Division in this Notice of
10 Opportunity for Hearing.

11 Persons with a disability may request a reasonable accommodation such as a sign language
12 interpreter, as well as request this document in an alternative format, by contacting Shaylin A.
13 Bernal, ADA Coordinator, voice phone number 602/542-3931, e-mail sabernal@azcc.gov.
14 Requests should be made as early as possible to allow time to arrange the accommodation.

15 IX.

16 ANSWER REQUIREMENT

17 Pursuant to A.A.C. R14-4-305, if RESPONDENTS or SPOUSE request a hearing, the
18 requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to
19 Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona
20 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be
21 obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site
22 at <http://www.azcc.gov/divisions/hearings/docket.asp>.

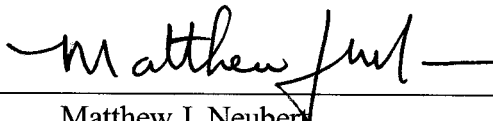
23 Additionally, the answering respondent must serve the Answer upon the Division.
24 Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-
25 delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix,
26 Arizona, 85007, addressed to Mike Dailey.

1 The Answer shall contain an admission or denial of each allegation in this Notice and the
2 original signature of the answering respondent or respondent's attorney. A statement of a lack of
3 sufficient knowledge or information shall be considered a denial of an allegation. An allegation
4 not denied shall be considered admitted.

5 When the answering respondent intends in good faith to deny only a part or a qualification
6 of an allegation, the respondent shall specify that part or qualification of the allegation and shall
7 admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

8 The officer presiding over the hearing may grant relief from the requirement to file an
9 Answer for good cause shown.

10 Dated this 27th day of February, 2009.

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13 Matthew J. Neubert
14 Director of Securities
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